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Editor's Note: The cases in the Index have been classified to conform to the Criminal Law Digest (third edition).

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U.S. Supreme Court *Bourjaily v. United States*, 107 S. Ct. 2775 (1987), 24 CLB 57. Court need not make an inquiry into independent indicia of reliability of coconspirator's statement.

Court of Appeals, D.C. Cir. *United States v. Perholtz*, 842 F.2d 343 (1988), 24 CLB

463. A coconspirator's statement was admissible even though a conspiracy was not formally charged in the indictment.

Court of Appeals, 1st Cir. *United States v. McNatt*, 842 F.2d 564 (1988), 24 CLB 466. Improper admission of coconspirator's statements did not require reversal.

Court of Appeals, 10th Cir. *United States v. Smith*, 833 F.2d 213 (1987), 24 CLB 264. Tape-recorded conversations between defendant's wife and government informant were admissible.

§ 34.260 —Use of prior testimony

Court of Appeals, 5th Cir. *United States v. McDonald*, 837 F.2d 1287 (1988), 24 CLB 362. Civil deposition testimony was not admissible against government in criminal prosecution.

35. THE TRIAL

§ 35.05 Defendant's right to continuance

Court of Appeals, 10th Cir. *United States v. West*, 828 F.2d 1468 (1987), 24 CLB 177. Denial of continuance did not deprive defendant of fair trial.

§ 35.50 Conduct of trial judge

§ 35.70 —Exclusion of evidence

U.S. Supreme Court *Taylor v. Illinois*, 108 S. Ct. 646 (1988), 24 CLB 359. Sixth amendment was not violated by exclusion of testimony of material defense witness.

Court of Appeals, 9th Cir. *United States v. Emmert*, 829 F.2d 805 (1987), 24 CLB 180. Narcotics conviction upheld despite exclusion of coconspirator's testimony about alleged threats by government agents.

New Jersey State v. Sugar, 527 A.2d 1377 (1987), 24 CLB 370. Victim's body admissible as evidence under inevitable discovery doctrine.

§ 35.95 Conduct of prosecutor

Court of Appeals, 1st Cir. *United States v. Hoffman*, 832 F.2d 1299 (1987), 24 CLB 259. Prosecutor's threat to indict defense

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witness for perjury insufficient grounds for reversal.

Court of Appeals, 1st Cir. *Campbell v. Fair*, 838 F.2d 1 (1988), 24 CLB 360. Prosecution's failure to correct key witness's testimony was not grounds for reversal.

Court of Appeals, 2d Cir. *United States v. McCormack*, 829 F.2d 322 (1987), 24 CLB 179. The prosecution's interruption of judge's charge to the jury did not require reversal.

§ 35.100 Discretion to prosecute

§ 35.110 —Comments made during summation

Court of Appeals, 1st Cir. *United States v. Santana-Camacho*, 833 F.2d 371 (1987), 24 CLB 265. Prosecutor's erroneous remark that defendant was an illegal alien was grounds for reversal.

Court of Appeals, 5th Cir. *United States v. Zabaneh*, 837 F.2d 1249 (1988), 24 CLB 361. Prosecutor's closing argument that depositions of defense witnesses should not be believed because they did not testify in person was not plain error.

Court of Appeals, 6th Cir. *Beam v. Foltz*, 832 F.2d 1041 (1987), 24 CLB 260. Prosecutor's comment that defense had job of proving defendant innocent does not require grant of habeas corpus writ.

§ 35.115 —Comment on defendant's failure to testify

U.S. Supreme Court *United States v. Robinson*, 108 S. Ct. 864 (1988), 24 CLB 359. Prosecutor's comments during summation on defendant's failure to take stand were proper.

§ 35.120 —Comment on defendant's silence while in custody

U.S. Supreme Court *Greer v. Miller*, 107 S. Ct. 3102 (1987), 24 CLB 57. Prosecutor's question about defendant's postarrest silence did not require reversal.

36. THE JURY

SELECTION

§ 36.00 Requirement of an impartial jury

U.S. Supreme Court *Tanner v. United States*, 107 S. Ct. 2739 (1987), 24 CLB 57. Evidence of drug or alcohol use by jurors did not require reversal.

§ 36.20 Exclusion of jurors in capital cases

U.S. Supreme Court *Gray v. Mississippi*, 107 S. Ct. 2045 (1987), 24 CLB 57. Exclusion of juror for cause in a capital case may require reversal.

§ 36.25 Conduct of voir dire

U.S. Supreme Court *Buchanan v. Kentucky*, 107 S. Ct. 2906 (1987), 24 CLB 58. A "death qualified" jury may be used in joint trial where death penalty is sought against only one defendant.

Court of Appeals, D.C. Cir. *United States v. Gordon*, 829 F.2d 119 (1987), 24 CLB 178. Defendant's right to be present during jury selection upheld.

Court of Appeals, 2d Cir. *United States v. Resto*, 824 F.2d 210 (1987), 24 CLB 63. Joint voir dire of jury panel for two cases was not improper.

Court of Appeals, 5th Cir. *United States v. Ford*, 824 F.2d 1430 (1987), 24 CLB 63. Magistrates may be delegated duty to preside over jury selection process.

§ 36.30 Peremptory challenges

Court of Appeals, 4th Cir. *United States v. Meredith*, 824 F.2d 1418 (1987), 24 CLB 64. Defendants in multidefendant trial were not entitled to more than ten peremptory challenges.

INSTRUCTIONS

§ 36.50 "Allen" dynamite charge

U.S. Supreme Court *Lowenfield v. Phelps*, 108 S. Ct. 546 (1988), 24 CLB 358. Combination of polling of jury and supplemental instruction encouraging jury to reach verdict in capital murder case was noncoercive.

§ 36.65 Burden of proof

U.S. Supreme Court *Yates v. Aiken*, 108 S. Ct. 534 (1988), 24 CLB 358. Decision

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requiring invalidation of conviction due to improper burden-shifting instruction should be applied retroactively.

Court of Appeals, 1st Cir. Doucette v. Bose, 842 F.2d 538 (1988), 24 CLB 464. Instruction in murder trial that shifted burden of disproving malice aforethought to defendant did not require a reversal.

Court of Appeals, 9th Cir. Walker v. Endell, 828 F.2d 1378 (1987), 24 CLB 177. Burden of proving defense of duress did not properly lie with defendant.

Court of Appeals, 9th Cir. United States v. Crowson, 828 F.2d 1427 (1987), 24 CLB 177. Government had burden of showing that immunized testimony was not used improperly.

§ 36.70 Character evidence

Court of Appeals, 3d Cir. United States v. Spangler, 838 F.2d 85 (1988), 24 CLB 361. Court's refusal to give requested instruction by defense on character evidence was not grounds for reversal.

§ 36.85 Duty to charge in defendant's theory of defense

Court of Appeals, 9th Cir. United States v. Lesina, 833 F.2d 156 (1987), 24 CLB 263. Defendant charged with murder was entitled to jury instruction on murder by accident.

§ 36.110 Intent and willfulness

Court of Appeals, 4th Cir. Hyman v. Aiken, 824 F.2d 1405 (1987), 24 CLB 64. Jury may not be properly instructed that malice was presumed from intentional doing of unlawful act.

Court of Appeals, 10th Cir. United States v. Manriquez-Arbizo, 833 F.2d 244 (1987), 24 CLB 264. Trial court's "deliberate ignorance" charge was proper.

§ 36.115 Lesser included offenses

Court of Appeals, 11th Cir. Jackson v. Dugger, 837 F.2d 1469 (1988), 24 CLB 363. Jury instruction in capital murder case that "death was presumed to be appropriate sentence" violated Eighth Amendment.

Court of Appeals, 11th Cir. Corn v. Kemp, 837 F.2d 1474 (1988), 24 CLB 363. Burden-shifting instruction in case where defendant relied on insanity defense was not harmless error.

VERDICTS

§ 36.210 Requirement of unanimity

Court of Appeals, 3d Cir. United States v. Beros, 833 F.2d 455 (1987), 24 CLB 266. Failure to give general unanimity instruction required reversal.

37. POST-TRIAL MOTIONS

§ 37.00 Motion for new trial

Court of Appeals, 10th Cir. United States v. Page, 828 F.2d 1476 (1987), 24 CLB 177. Motion for new trial denied despite recantation of trial testimony by key witness.

§ 37.10 Motion to vacate conviction

§ 37.30 —Appeal from denial of collateral relief

U.S. Supreme Court Hilton v. Braunskill, 107 S. Ct. 2113 (1987), 24 CLB 58. "Risk of flight" is not the only relevant issue in deciding whether to stay habeas corpus relief.

§ 37.35 Federal habeas corpus

§ 37.40 —Jurisdiction

Court of Appeals, 5th Cir. Czere v. Butler, 833 F.2d 59 (1987), 24 CLB 262. Improper advice from attorney as to parole eligibility was a basis for habeas corpus relief.

§ 37.65 Procedure

Court of Appeals, 7th Cir. Turner v. Henman, 829 F.2d 612 (1987), 24 CLB 180. Parole commission's failure to follow own administrative rules did not entitle prisoner to habeas corpus relief.

38. SENTENCING AND PUNISHMENT

SENTENCING

§ 38.10 Presentence report

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U.S. Supreme Court *Booth v. Maryland*, 107 S. Ct. 2529 (1987), 24 CLB 58. "Victim impact statement" was not admissible in sentencing phase of capital murder trial.

Court of Appeals, D.C. Cir. *United States v. Fogel*, 829 F.2d 77 (D.C. Cir. 1987), 24 CLB 177. Court's refusal to allow defendant to present evidence to rebut government's sentencing memo was proper.

Court of Appeals, 1st Cir. *United States v. Santiago*, 828 F.2d 866 (1987), 24 CLB 174. Validity of presentence report was not a proper subject of appeal when a full opportunity had been given to contest it at sentencing.

Court of Appeals, 3d Cir. *United States v. Katzin*, 824 F.2d 234 (1987), 24 CLB 64. Court may correct sentence imposed in violation of requirement that it resolve all factual disputes.

§ 38.30 Standards for imposing sentence

U.S. Supreme Court *Miller v. Florida*, 107 S. Ct. 2446 (1987), 24 CLB 59. Revised sentencing guidelines could not be applied to crimes occurring before effective date.

Court of Appeals, 5th Cir. *Williams v. Lynaugh*, 837 F.2d 1294 (1988), 24 CLB 362. Denial of opportunity for defendant in capital murder case to introduce evidence of his mental condition did not merit stay of execution.

Court of Appeals, 5th Cir. *Brogdon v. Butler*, 824 F.2d 338 (1987), 24 CLB 64. Evidence of aggravated rape to prove first-degree murder as well as enhance sentence did not invalidate death sentence.

Court of Appeals, 11th Cir. *Stone v. Dugger*, 837 F.2d 1477 (1988), 24 CLB 363. Jury instruction in capital murder case that only statutory mitigating evidence may be considered was improper.

§ 38.50 Resentencing

Court of Appeals, 3d Cir. *United States v. Guevremont*, 829 F.2d 423 (1987), 24 CLB 179. Change of sentence to add a probationary term was proper.

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§ 38.60 Credit for time spent in custody prior to sentencing

Court of Appeals, 11th Cir. *Palmer v. Dugger*, 833 F.2d 253 (1987), 24 CLB 265. State prisoners had constitutional right to credit for time served prior to extradition.

§ 38.70 Multiple punishment

Court of Appeals, 9th Cir. *United States v. Wicks*, 833 F.2d 192 (1987), 24 CLB 264. Offenses prosecuted at same trial may be considered as "previous convictions" at sentencing.

§ 38.100 Concurrent sentences

Court of Appeals, 3d Cir. *United States v. Aguilar*, 843 F.2d 735 (1988), 24 CLB 467. Separate sentences for conspiracy and for engaging in a continuing enterprise were invalid.

39. THE APPEAL

§ 39.00 Right to appeal

Court of Appeals, 1st Cir. *United States v. Larouche Campaign*, 829 F.2d 259 (1987), 24 CLB 178. Denial of motion to dismiss indictment based on alleged grand jury abuses was not immediately appealable.

Court of Appeals, 3d Cir. *Feigley v. Fulcomer*, 823 F.2d 29 (1987), 24 CLB 261. Escape from prison barred right to appeal.

§ 39.35 Scope of appellate review

U.S. Supreme Court *Ray v. United States*, 107 S. Ct. 2093 (1987), 24 CLB 59. Monetary assessment on each count required appellate court to review all counts on which the defendant was convicted.

40. PROBATION AND PAROLE

§ 40.05 Revocation of probation

Court of Appeals, 3d Cir. *United States v. Camarata*, 828 F.2d 974 (1987), 24 CLB 175. Sentencing court has authority to revoke defendant's probation for actions occurring prior to commencement of probation.

§ 40.15 —Credit for time spent on probation before revocation

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Court of Appeals, 2d Cir. *Weeks v. Quinlan*, 838 F.2d 41 (1988), 24 CLB 360. Federal parolee was not entitled to credit for time served in state prison while on parole.

§ 40.20 Standards for determining eligibility for parole

U.S. Supreme Court *Board of Pardons v. Allen*, 107 S. Ct. 2415 (1987), 24 CLB 59. Prisoner has a due process interest in parole release.

Court of Appeals, 5th Cir. *Ceniceros v. United States Parole Comm'n*, 837 F.2d 1358 (1988), 24 CLB 362. Parole commission found to have violated its own regulations by considering charge for which defendant was acquitted in determining probable parole date.

§ 40.25 Revocation of parole

§ 40.35 —Due process requirements

U.S. Supreme Court *Griffin v. Wisconsin*, 107 S. Ct. 3164 (1987), 24 CLB 59. A probationer's home may properly be searched without a warrant.

41. PRISONER PROCEEDINGS

§ 41.05 Cruel and unusual treatment

Court of Appeals, 5th Cir. *Foulds v. Corley*, 833 F.2d 52 (1987), 24 CLB 262. Dismissal of prisoner's pro se § 1983 action based on disciplinary proceeding was premature.

Court of Appeals, 6th Cir. *Grosedose v. Dutton*, 829 F.2d 581 (1987), 24 CLB 179. Finding that conditions in cell block housing death sentence inmates was cruel and unusual was erroneous.

§ 41.10 Segregated prison facilities

Court of Appeals, 5th Cir. *Dzana v. Foti*, 829 F.2d 558 (1987), 24 CLB 179. Prisoner facing disciplinary segregation was entitled to a hearing.

§ 41.15 Freedom of religion

U.S. Supreme Court *O'Lone v. Estate of Shabazz*, 107 S. Ct. 2400 (1987), 24 CLB

60. Court would not review prison regulations prohibiting Islamic inmates from attending Friday religious services.

§ 41.45 Other actions under Federal Civil Rights Act

Court of Appeals, D.C. Cir. *Morgan v. District of Columbia*, 824 F.2d 1049 (1987), 24 CLB 65. A prisoner may be awarded damages for injury sustained in jailhouse fight.

Court of Appeals, 1st Cir. *Lyons v. Powell*, 838 F.2d 28 (1988), 24 CLB 360. Confinement in jail cell for 22 to 23 hours per day was sufficient grounds for civil rights action.

Court of Appeals, 1st Cir. *Cortes-Quinones v. Jimenez-Mettlehip*, 842 F.2d 556 (1988), 24 CLB 465. Prison officials were not entitled to qualified immunity in § 1983 action relating to a prisoner's death.

Court of Appeals, 2d Cir. *Gill v. Mooney*, 824 F.2d 192 (1987), 24 CLB 65. An inmate has no liberty or property interest in a prison job.

Court of Appeals, 3d Cir. *Jones v. Connell*, 833 F.2d 503 (1987), 24 CLB 266. Federal court had no power to order state corrections official to follow state law.

§ 41.55 Medical treatment for prisoners

Court of Appeals, 7th Cir. *Murphy v. Lane*, 833 F.2d 106 (1987), 24 CLB 262. Mere negligence on part of government physician in diagnosing inmate's medical condition was not an Eighth Amendment violation.

§ 41.60 Prison regulations

Court of Appeals, D.C. Cir. *Abbott v. Meese*, 824 F.2d 1166 (1987), 24 CLB 65. Prison regulation prohibiting inmate-to-inmate correspondence was improper.

Court of Appeals, 5th Cir. *Davis v. Carlson*, 837 F.2d 1318 (1988), 24 CLB 362. Prisoner's wife did not have right to conjugal visits.

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42. ANCILLARY PROCEEDINGS

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§ 42.10 Procedural requirements

Court of Appeals, 2d Cir. Sassower v. Sheriff of Westchester County, 824 F.2d 184 (1987), 24 CLB 65. Criminal contempt citation may be properly imposed without trial or evidentiary hearing.

§ 42.18 Appointment of counsel

U.S. Supreme Court Young v. United States ex rel. Vuitton et Fils, 107 S. Ct. 2124 (1987), 24 CLB 60. Appointment of private attorneys to prosecute criminal contempt actions was improper when party was beneficiary of court order.

DEPRIVATION OF CIVIL RIGHTS

§ 42.30 In general

U.S. Supreme Court Hewitt v. Helms, 107

S. Ct. 2672 (1987), 24 CLB 60. Inmate was not entitled to attorney's fees in civil rights action.

U.S. Supreme Court Forrester v. White, 108 S. Ct. 538 (1988), 24 CLB 358. State court judge did not have absolute immunity from civil rights damage suit.

Court of Appeals, 10th Cir. Specht v. Jensen, 832 F.2d 1516 (1987), 24 CLB 261. Police officers who conducted warrantless search of office and home were not to be entitled to qualified immunity from civil damages.

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§ 42.60 In general

Court of Appeals, 2d Cir. United States v. Robilotto, 828 F.2d 940 (1987), 24 CLB 175. RICO forfeiture statute did not require that proceeds of racketeering activities be traced to identifiable assets.

PART V—CONSTITUTIONAL GUARANTEES

43. ADMISSIONS AND CONFESSIONS

GROUND S FOR EXCLUSION; GENERALLY

§ 43.30 Delay in arraignment

Arkansas Duncan v. State, 726 S.W.2d 653 (1987), 24 CLB 81. Incriminating statements obtained from defendant during delay in violation of prompt appearance rule excluded.

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§ 43.60 Prerequisite of custodial interrogation

Court of Appeals, D.C. Cir. United States v. Friedrich, 842 F.2d 382 (1988), 24 CLB 463. Administrative interview of FBI agent was held under grant of immunity.

Court of Appeals, 2d Cir. United States v. Okwumabua, 828 F.2d 950 (1987), 24 CLB 175. Government agents need not identify themselves during noncustodial interview.

§ 43.90 Waiver of *Miranda* rights

§ 43.95 —Voluntary and intelligent requirement

Arizona State v. Carrillo, 750 P.2d 883 (1988), 24 CLB 469. Police conduct was not overreaching despite defendant's mental shortcomings.

§ 43.120 Statement to persons other than police

U.S. Supreme Court Arizona v. Mauro, 107 S. Ct. 1931 (1987), 24 CLB 61. Tape recording of conversation between defendant and his wife did not violate *Miranda*.

44. CONFRONTATION OF WITNESSES

§ 44.00 In general

U.S. Supreme Court Kentucky v. Stincer, 107 S. Ct. 2658 (1987), 24 CLB 61. Defendant may be properly excluded from hearing on competency of child witnesses.

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§ 44.05 —Interpretations by state courts

Pennsylvania Commonwealth v. Ludwig, 531 A.2d 459 (Super. 1987), 24 CLB 371. Right of confrontation not violated when child witness permitted to testify via closed circuit television.

§ 44.30 Opportunity to cross-examine

South Carolina State v. Cooper, 353 S.E.2d 451 (1987), 24 CLB 73. Videotaping witness's testimony outside defendant's presence did not violate right of confrontation.

§ 44.38 Videotaped testimony

Court of Appeals, 5th Cir. United States v. Guardian-Salazar, 824 F.2d 344 (1987), 24 CLB 66. Videotaped depositions of government witnesses were inadmissible.

45. RIGHT TO COUNSEL

SCOPE AND EXTENT OF RIGHT GENERALLY

§ 45.05 Right of indigent defendant

Wisconsin State v. Lehman, 403 N.W.2d 438 (1987), 24 CLB 73. Trial court has inherent power to appoint counsel for indigent defendant appearing pro se.

§ 45.20 Right to continuance of trial to obtain new counsel

Court of Appeals, D.C. Cir. United States v. Rettaliata, 833 F.2d 361 (1987), 24 CLB 265. Denial of defendant's plea for new counsel was proper.

Court of Appeals, 4th Cir. United States v. Gallop, 838 F.2d 105 (1988), 24 CLB 361. Indigent defendant was not entitled to substitution of counsel.

TYPE OR STAGE OF PROCEEDING

§ 45.45 Arraignment and preliminary hearing

Rhode Island State v. Mattatall, 525 A.2d 49 (1987), 24 CLB 180. Statements made during telephone conversation to which police were listening were obtained in violation of right to counsel.

§ 45.80 Habeas corpus and other post-conviction collateral proceedings

U.S. Supreme Court Pennsylvania v. Finley, 107 S. Ct. 1990 (1987), 24 CLB 62. Prisoner has no right to appointed counsel in a postconviction proceeding.

ADEQUACY AND EFFECTIVENESS OF COUNSEL

§ 45.110 Ineffectiveness

Court of Appeals, 3d Cir. Diggs v. Owens, 833 F.2d 439 (1987), 24 CLB 266. Failure of counsel to object to consecutive sentences was not grounds for reversal.

Court of Appeals, 7th Cir. Lewis v. Lane, 832 F.2d 1446 (1987), 24 CLB 260. Defense counsel's stipulation to nonexistence of defendants' prior convictions constituted ineffective assistance of counsel.

§ 45.120 —Failure to assert available defense

Court of Appeals, 1st Cir. Casale v. Fair, 833 F.2d 386 (1987), 24 CLB 265. Counsel in murder trial was not ineffective even though he failed to investigate possibility that others had motive to kill victim.

§ 45.130 —Failure to introduce evidence or make objections

Court of Appeals, 5th Cir. Bell v. Lynaugh, 828 F.2d 1085 (1987), 24 CLB 176. Defense attorney was not ineffective for failing to present evidence of defendant's mental retardation in death penalty case.

Court of Appeals, 6th Cir. Blackburn v. Foltz, 828 F.2d 1177 (1987), 24 CLB 176. Defense counsel was ineffective when he gave erroneous advice concerning possible use of prior convictions.

Florida State v. Bolender, 503 So. 2d 1247 (1987), 24 CLB 74. Eschewal of nebulous nonstatutory mitigating evidence during sentencing in favor of proportionality argument was not ineffective assistance of counsel.

CONFLICT OF INTEREST

§ 45.150 Representation of co-defendants

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U.S. Supreme Court *Burger v. Kemp*, 107 S. Ct. 3114 (1987), 24 CLB 61. Representation of two inditees by same law firm did not require reversal.

RIGHT TO CONFER WITH COUNSEL

§ 45.165 In general

§ 45.166 —Interpretations by state courts

Connecticut State v. Mebane, 529 A.2d 680 (1987), 24 CLB 269. Denial of right of consultation between defendant and attorney during brief recess requires reversal.

46. CRUEL AND UNUSUAL PUNISHMENT

§ 46.00 In general

Court of Appeals, 1st Cir. United States v. Jimenez-Rivera, 842 F.2d 545 (1988), 24 CLB 465. Sentence of up to ninety-nine years' imprisonment in arson case was not excessive.

§ 46.05 Death penalty

U.S. Supreme Court Sumner v. Shuman, 107 S. Ct. 2716 (1987), 24 CLB 61. Mandatory death penalty for prison inmate convicted of murder was unconstitutional.

New Jersey State v. Ramseur, 524 A.2d 188 (1987), 24 CLB 181. New Jersey death penalty act upheld.

47. DOUBLE JEOPARDY

§ 47.00 In general

U.S. Supreme Court Ricketts v. Adamson, 107 S. Ct. 2680 (1987), 24 CLB 62. Breach of a plea agreement was grounds for trial on original charges.

§ 47.05 —Interpretations by state courts

Rhode Island State v. Iovino, 524 A.2d 556 (1987), 24 CLB 80. Purported acquittal of charges did not bar trial justice from later submitting case to jury on those charges.

§ 47.10 When jeopardy attaches

Court of Appeals, 2d Cir. United States v. Muhammad, 824 F.2d 214 (1987), 24 CLB

66. Consecutive sentences for continuing criminal enterprise and RICO did not violate double-jeopardy clause.

§ 47.20 Mistrials

Court of Appeals, 9th Cir. United States v. Govro, 833 F.2d 135 (1987), 24 CLB 263. Magistrate's termination of trial in defendant's favor barred retrial.

New York People v. Catten, 508 N.E.2d 920 (1987), 24 CLB 181. Retrial of defendant following declaration of mistrial without his consent barred by double jeopardy provisions.

§ 47.25 —Reason for grant

Georgia Tieu v. State, 358 S.E.2d 247 (1987), 24 CLB 276. Defendant not placed in legal jeopardy by earlier proceeding in which individual other than defendant was brought into court and placed on trial.

§ 47.45 Separate and distinct offenses

Court of Appeals, 2d Cir. United States v. Nersesian, 824 F.2d 1294 (1987), 24 CLB 66. Prior drug conviction did not bar subsequent prosecution for drug conspiracy covering same time period.

Illinois People v. Jackson, 514 N.E.2d (1987), 24 CLB 368. Prior driving-under-the-influence prosecution did not bar reckless homicide prosecution under double jeopardy principles.

South Carolina State v. Carter, 353 S.E.2d 875 (1987), 24 CLB 75. Double-jeopardy claim prohibited defendant's conviction for reckless homicide after being convicted of DUI.

48. DUE PROCESS

§ 48.00 In general

U.S. Supreme Court United States v. Mendoza-Lopez, 107 S. Ct. 2148 (1987), 24 CLB 62. Statute permitting imposition of criminal penalty for reentry after deportation violates due process.

Florida Haliburton v. State, 514 So. 2d 1088 (1987), 24 CLB 368. Police failure to inform defendant that his attorney was in

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station house and wished to speak to him violated due process.

§ 48.05 —Drug violations

Louisiana State v. Spooner, 520 So. 2d 336 (1988), 24 CLB 472. Cash seized near narcotics cannot be statutorily presumed forfeitable.

§ 48.10 —Felonious homicide

Connecticut State v. Stoddard, 537 A.2d 446 (1988), 24 CLB 470. Suspect must be informed of attorney's offer to help him.

Tennessee State v. Bobo, 727 S.W.2d 945 (1987), 24 CLB 76. Only convictions entered prior to hearing may be used as "triggering acts" of mass murder aggravating circumstances for purposes of death penalty statute.

§ 48.30 —Sex crimes

Illinois People v. Foggy, 521 N.E.2d 86 (1988), 24 CLB 471. Confidentiality of rape victim's statements to counselor upheld.

51. FREEDOM OF THE PRESS

§ 51.00 In general

Court of Appeals, 2d Cir. In re CBS Inc., 828 F.2d 958 (1987), 24 CLB 175. News media was entitled to copy of videotaped deposition introduced in criminal case.

Court of Appeals, 2d Cir. In re Dow Jones & Co., 842 F.2d 603 (1988), 24 CLB 466. "Gag" order relating to trial publicity upheld.

53. FREEDOM OF SPEECH AND EXPRESSION

§ 53.00 In general

Hawaii State v. Kam, 748 P.2d 372 (1988), 24 CLB 470. Hawaii's constitution's right to privacy includes right to obtain pornography.

54. IDENTIFICATION PROCEDURES

§ 54.05 Showups

New York People v. Riley, 517 N.E.2d

520 (1987), 24 CLB 370. Showup identification evidence held inadmissible.

58. PROHIBITION AGAINST UNLAWFUL SEARCHES AND SEIZURES

SCOPE AND EXTENT OF RIGHT IN GENERAL

§ 58.00 What constitutes a search

Court of Appeals, D.C. Cir. Jones v. McKenzie, 833 F.2d 335 (1987), 24 CLB 265. Mandatory drug testing for school district employees was reasonable requirement.

Court of Appeals, 2d Cir. Wilkinson v. Forest, 832 F.2d 1330 (1987), 24 CLB 259. Searches of persons entering rally sites did not violate Fourth Amendment.

Pennsylvania Commonwealth v. Johnston, 530 A.2d 74 (1987), 24 CLB 268. Reasonable suspicion justifies warrantless canine sniff for drugs in common area of storage facility.

§ 58.05 Constitutionally protected areas

Court of Appeals, 2d Cir. United States v. Zapata-Tamallo, 833 F.2d 25 (1987), 24 CLB 261. Defendant did not lack sufficient legitimate expectation of privacy as to exclude bag in apartment found to contain drugs.

Court of Appeals, 4th Cir. United States v. Mehra, 824 F.2d 297 (1987), 24 CLB 66. Textile company had no expectation of privacy against search and seizure.

Florida Riley v. State, 511 So. 2d 282 (1987), 24 CLB 367. Defendant had reasonable expectation of privacy in greenhouse and its contents from aerial observations of police.

Pennsylvania Commonwealth v. Lemanski, 529 A.2d 1085 (Super. 1987), 24 CLB 371. Police use of binoculars to observe greenhouse violated defendant's Fourth Amendment rights.

§ 58.10 Property subject to seizure

§ 58.15 —Plain view

Washington State v. Bell, 737 P.2d 254

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(1987) (en banc), 24 CLB 181. Police did not need warrant to seize evidence in plain view of fire fighters.

§ 58.20 —Abandonment

Minnesota State v. Krech, 403 N.W. 634 (1987), 24 CLB 79. Defendant had no reasonable expectation of privacy in garbage left in trash can of multiparty residence.

§ 58.45 Official government inspections

U.S. Supreme Court New York v. Burger, 107 S. Ct. 2636 (1987), 24 CLB 63. Statute may properly authorize warrantless inspections of vehicles in automobile junkyards.

§ 58.55 Search of parolees

California People v. Bravo, 738 P.2d 336 (1987) (en banc), 24 CLB 364. Probation search condition permitting search without warrant also permitted search without "reasonable cause."

BASIS FOR MAKING SEARCH AND/OR SEIZURE

§ 58.75 Search warrant

§ 58.80 —Sufficiency of underlying affidavit

Washington State v. Coates, 735 P.2d 64 (1987), 24 CLB 76. Search warrant is valid if affidavit contains sufficient facts to establish probable cause.

Washington State v. Thetford, 745 P.2d 496 (1987), 24 CLB 371. Agent's involvement with police so great that he no longer qualified as private individual for purposes of challenging veracity of affidavit for search warrant.

§ 58.85 —Validity of warrant on its face

Nebraska State v. Pecha, 407 N.W.2d 760 (1987), 24 CLB 275. Search warrant containing catchall phrase "John and/or Jane Doe" was invalid general warrant.

§ 58.105 Search incident to a valid arrest

Court of Appeals, 8th Cir. Arcoren v. Peters, 829 F.2d 671 (1987), 24 CLB 180.

Pat-down search was proper part of arrest procedure.

§ 58.120 —Manner of making arrest or entering premises as affecting validity of subsequent arrest or search

New York People v. Kozlowski, 505 N.E.2d 611 (1987), 24 CLB 77. Incriminating evidence was not obtained by alleged illegal entry of police into defendant's home to make arrest.

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